

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALFRED SMITH, JR. AND CURRIE	§	
SMITH	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. 4:17-cv-3016
	§	
CENTRAL MUTUAL INSURANCE	§	
COMPANY, JAMES DAVID BORUK,	§	
JR., AND MICHAEL TREVINO	§	
Defendants.	§	

NOTICE OF REMOVAL

Defendant, Central Mutual Insurance Company (hereinafter referred to as “Central”), hereby files this Notice of the Removal of this case from the 361st Judicial District Court of Brazos County, Texas, to the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. § 1441 and 1446(b) and would show the Court as follows:

1.

Central has been sued in Cause No. 17-002319-CV-361, entitled “Alfred Smith, Jr. and Currie Smith v. Central Mutual Insurance Company, James David Boruk, Jr. and Michael Trevino, currently pending in the 361st Judicial District Court of Brazos County, Texas. That lawsuit was originally filed on August 31, 2017 in the 361st Judicial District Court of Brazos County, Texas.

2.

Central first received notice of Plaintiffs’ lawsuit when Plaintiffs’ attorney provided a copy of the lawsuit to Central’s attorney on September 7, 2017. Thirty days from that date was Saturday, October 7, 2017, which would make the deadline for filing the notice of removal be at the very earliest, Monday, October 9, 2017. Central is filing this notice by October 9, 2017, making this

removal timely under 28 U.S.C. § 1446(b).

3.

At the date of commencement of this action and at all pertinent times, Plaintiffs are citizens of the State of Texas, being residents of and domiciled in the State of Texas.

4.

At the date of commencement of this action and at all pertinent times, the Defendants to this lawsuit are citizens of the following:

- (A) Central is a citizen of the State of Ohio, being an insurance company incorporated in the State of Ohio, and having its principal place of business in the State of Ohio;
- (B) Defendant James David Rourk is a citizen of the State Texas; and
- (C) Defendant Michael Trevino is a citizen of the State of Texas

5.

The citizenship of Defendants Rourk and Trevino are not considered for jurisdictional purposes, as their joinder in this lawsuit is fraudulent, since Plaintiff has no viable cause of action against them, nor has Plaintiff sufficiently pled such for purposes of keeping this lawsuit from being removed to federal court. There is no sufficient factual or legal basis alleged in Plaintiff's lawsuit that asserts any viable claim against Defendants Rourk and Trevino so as to keep this case from being removed to federal court. This is especially the case under the pleading standard required by the Fifth Circuit in its recent opinion in *Energy Ventures Management, L.L.C. v. United Energy Group, Ltd.*, 818 F.3d 193, 200-01 (5th Cir. 2016). As no viable claims have been pled by Plaintiff against Defendants Rourk and Trevino, their citizenship would not be considered for jurisdictional purposes, nor is their consent needed to remove this lawsuit to federal court. Complete diversity thus

exists between Plaintiff and the remaining Defendant, Central, such that diversity of citizenship exists in this matter.

6.

This Court has original jurisdiction of this action under 28 U.S.C. § 1332, and it may be removed to this Court by Central, pursuant to 28 U.S.C. § 1441, it being a civil action wherein the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, as between citizens of different states. The amount in controversy requirement is easily satisfied by Paragraph 6 of Plaintiffs' Petition, which shows Plaintiffs are seeking damages over \$200,000, but not more than \$1,000,000, which easily establishes an amount in controversy of over \$200,000 at a minimum, thereby satisfying the amount in controversy required for diversity jurisdiction.

7.

Copies of all the pleadings which have been filed in this action to date and which are attached as Exhibit "A" include the following:

- a. Plaintiff's Original Petition; and
- b. Citation served on Central.

To the best of Central's knowledge, no other pleading, process or order has been filed or served in the state court lawsuit referred to above.

Wherefore, Defendant, Central Mutual Insurance Company, prays that this action be removed to this Court from the 361st Judicial District Court of Brazos County, Texas and for further proceedings as may be necessary.

Respectfully submitted,

/S/Russell J. Bowman

Russell J. Bowman
Texas State Bar No. 02751550
Southern District Bar No. 20283
800 West Airport Freeway, Suite 860
Irving, Texas 75062
(214) 922-0220
(214) 922-0225 (FAX)
E-Mail: russelljbowman@sbcglobal.net
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on October 9, 2017, I electronically filed the foregoing document with the clerk of court for the U. S. District Court, Southern District of Texas, using the electronic case filing system of the court.

I hereby certify that I have served a true and correct copy of the foregoing document on all counsel of record, as indicated below, on this the 9th day of October, 2017:

Mr. Bill Youngkin
Youngkin & Doss, P.L.L.C.
3131 E. 29th Street Bldg. D
Suite 200
Bryan, Texas 77802

VIA E-MAIL: bill@youngkinlaw.com

/S/Russell J. Bowman
Russell J. Bowman

EXHIBIT A